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Attorneys for Plaintiffs The Wizard Trades, LLC and Michael Hubbs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

THE WIZARD TRADES, LLC, a Utah
Limited Liability Company, and MICHAEL
HUBBS, an individual,

Plaintiff,

vs.

CHARLTON LACHASE, an individual,
ANDRA RUSH, an individual, STEVEN
DUHON, an individual, and BRIAN
HERTNEKY, and individual,

Defendants.

MOTION FOR LEAVE TO AMEND

Case No. 2:23-cv-00207-DBB-DAO

Judge David Barlow

Magistrate Judge Daphne A. Oberg

Plaintiffs, The Wizard Trades, LLC, and Michael Hubbs, hereby move this Court for leave to file a Second Amended Complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure.

BACKGROUND

Defendant Andra Rush has filed a motion to dismiss on the grounds that the Amended Complaint refers to the conduct of the various defendants collectively and does not adequately identify her conduct giving rise to the claims asserted against her. At the same time, she submits three articles about Plaintiff Hubbs which have no bearing on her motion in an apparent attempt

to further disparage his reputation. Plaintiffs seek leave to more specifically claim the actions of Ms. Rush and the other Defendants. Additionally reference to a second copyright registration which has been infringed has also been added.

ARGUMENT

I. LEAVE TO AMEND SHOULD BE FREELY GIVEN

Pursuant to Rule 15, a court's decision whether to grant leave for amendment "shall be freely given when justice so requires." *Panis v. Mission Hills Bank*, 60 F.3d 1486, 1494 (10th Cir. 1995) (citing *Woolsey v. Marion Labs. Inc.*, 934 F.2d 1452, 1462 (10th Cir. 1991)); See also, Fed. R. Civ. P. 15(a). Relevant factors that a court may consider in determining whether or not to allow amendment include: timeliness, prejudice to the other party, bad faith and futility of the amendment. *Hom v. Squire*, 81 F.3d 969, 973 (10th Cir. 1996).

Plaintiff's motion is timely. None of the Defendants have filed an answer to the Amended Complaint and thus there is no prejudice to the parties. To the contrary, the Second Amended Complaint provides more specific allegations as to the actions of the Defendants which give rise to this litigation. The amendments are neither made in bad faith, nor are they futile, as the amendments show the actions taken by Defendants in their effort to destroy Plaintiff Hubbs and his business, Plaintiff TWT. Therefore, Plaintiffs request leave to file the Second Amended Complaint. Copies of the Second Amended Complaint and a compare version versus the First Amended Complaint are attached as Exhibits A and B respectively.

Respectfully submitted this 31st day of July 2023.

BATEMAN IP

/s/ Randall B. Bateman

Randall B. Bateman

*Attorneys for Plaintiffs The Wizard Trades, LLC
and Michael Hubbs*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSITION TO ANDRA RUSH’S MOTION TO DISMISS** was served on Defendants via First Class mail on July 31, 2023, as follows:

Steven Duhon
(by mail at the address of service identified in the executed Summons)

Brian Hertneky – via CM/ECF

Charlton Lachase - via CM/ECF

Andra Rush – via CM/ECF

/s/Randall B. Bateman